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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,152	07/08/2003	Parris S. Wellman	14641Z (ETH-1559CONT)	8263
23389	7590	09/28/2005	EXAMINER	
SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			PEFFLEY, MICHAEL F	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/615,152	<b>Applicant(s)</b> WELLMAN ET AL.	
	<b>Examiner</b> Michael Peffley	<b>Art Unit</b> 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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Applicant's amendments and comments, received July 8, 2005 have been fully considered by the examiner. In particular, applicant's amendments to the specification are deemed to overcome the objection to the specification and the 35 USC 112, first paragraph rejection. The amendment to page 7 of the specification is not deemed to present new matter as applicant is merely describing an element clearly shown in the figures. The following is a complete response to the July 8, 2005 communication.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 103***

Claims 21-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ryan et al (6,224,593) in view of the teaching of Abele et al (5,190,541).

Ryan et al discloses a surgical device that includes a shaft (10) having an internal lumen, and a hook (36) at the distal end of the shaft in communication with a slot. Ryan et al also disclose a clamp member (42) slidable in the slot to clamp tissue against the hook member. As seen in Figure 1, there is a tubular shaft (30) having an internal lumen and a slot comprising a cross section of the tubular shaft. The slot is deemed to be the entire open area above the extension member (32) through which the clamp member (42) slides. The extension member is an extension of the tubular shaft and has a hook member (36) at the distal end. Ryan et al disclose a microwave electrode arrangement for treating tissue, and not RF electrodes, and fail to disclose an electrode on the hook member. Ryan et al also fail to disclose a cutting member.

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As disclosed previously, Abele et al disclose an analogous clamping/heating instrument and specifically disclose the use of RF electrodes and a cutting member to cut tissue after its been clamped.

To have provided the Ryan et al device with RF electrodes, in lieu of the microwave electrodes, would have been an obvious modification for one of ordinary skill in the art in view of the teaching of Abele et al. To have further provided the Ryan et al device with a cutting member to cut tissue after its been clamped and treated would have been an obvious modification in view of the Abele et al teaching.

### ***Response to Arguments***

Applicant's arguments filed July 8, 2005 have been fully considered but they are not persuasive.

With regard to the combination of the Ryan et al device with the Abele et al teaching, applicant contends that Ryan et al fail to disclose or suggest a tubular shaft having a slot comprised of a cross-sectional portion of the tubular shaft in which tissue is captured. The examiner disagrees. As seen in Figure 1, the Ryan et al device includes a tubular shaft (30) having an internal lumen through which the claiming means (42) is inserted. The tubular shaft (30) includes an extension (34) that extends to a hook member (36). The open space created by the extension member is deemed to be a "slot" into which tissue may be inserted and the clamp may slide (see Figure 6). Applicant's claims do not provide any specific dimensions and/or shape for the "slot" such that the claims would distinguish over the Ryan et al device.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

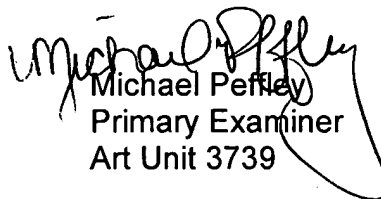
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michael Perley  
Primary Examiner  
Art Unit 3739

mp  
September 26, 2005